

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

CASE NO.

TERESA A. MCCOY
Plaintiff

V.

PRUDENTIAL INSURANCE COMPANY
OF AMERICA
Defendant

05 11283 NG

RECEIPT # _____
AMOUNT \$ 250.00
SUMMONS ISSUED 1
LOCAL RULE 4.1 -
WAIVER FORM -
MCF ISSUED -
BY DPTY. CLK. M.P.
DATE 6/17/2005

COMPLAINT WITH JURY DEMAND

MAGISTRATE JUDGE TGD

Parties

1. Plaintiff is Teresa A. McCoy ("Ms. McCoy") an individual having a usual place of residence at East Taunton, Bristol County, Massachusetts.
2. Defendant is Prudential Insurance Company of America ("Prudential") an insurance company existing under the laws of the State of New Jersey, having a place of business at 213 Washington Street, Newark, New Jersey and doing business in the Commonwealth of Massachusetts.

Jurisdiction and Venue

3. This Court has original jurisdiction for claims for benefits arising under 29 U.S.C. § 1132. Venue is proper before this Court, because the plaintiff resides in the eastern district of Massachusetts.

Facts Common to All Counts

4. At all times material hereto, Ms. McCoy had been employed as a full time employee of State Street Bank and Trust Company.
5. At all times relevant hereto, Ms. McCoy was a beneficiary under a short term and long term group disability insurance plan provided to State Street Bank and Trust Company and its employees and underwritten and administered by Prudential ("Plan").
6. The Plan is an "employee welfare benefit plan," as defined by ERISA, 29 U.S.C. § 1002(1), and may be sued under ERISA as an entity, pursuant to 29 U.S.C. § 1132(d)(1).
7. The Plan is liable for payment of benefits under the Plan.
8. Ms. McCoy is a "participant" in the Plan, as defined by ERISA, 29 U.S.C. § 1002(7).
9. At all times material hereto, and since the date that Ms. McCoy first sought short term disability benefits under the Plan, she has been "totally disabled" within the meaning of the terms of the Plan, and has been entitled under the Plan to be paid both short-term disability and long-term disability benefits, and continues to be disabled to date.
10. At all times material hereto, Ms. McCoy has internally appealed the Plan's denial of her request for benefits and has followed the requirements of the Plan.
11. Ms. McCoy has complied with administrative procedures under the Plan and under ERISA.

12. Prudential has not properly been granted authority to make discretionary benefit decisions by either the plan sponsor, plan administrator or the Massachusetts Division of Insurance. To the extent that Prudential contends that it has been granted authority to make discretionary benefit decisions, that authority was self granted by Prudential alone.
13. The insurance policy under which MetLife paid benefits to Ms. McCoy was not approved by the Massachusetts Division of Insurance, permitting the use of a clause granting discretionary authority to Prudential to pay benefits as it determined.
14. To the extent that Prudential had been granted discretionary authority under the Plan, Prudential abused that discretion and should not been accorded the deference owed to a true fiduciary.

Count I

**Benefits Due From Prudential
Under ERISA, 29 U.S.C. § 1132**

15. Plaintiff realleges paragraphs 1 through 14 and incorporates the same by reference as if fully set forth herein again.
16. As the *de facto* plan administrator and benefit payor, Prudential is operating under a conflict of interest, and to the extent that Prudential contends that its decision to deny benefits under the discretionary standard of review, that contention must be denied, and Prudential's decision must be reviewed under a *de novo* standard of review.
17. Prudential's decision to deny to Ms. McCoy's benefits under the Plan are wrongful whether determined under *de novo* standard, or the arbitrary and capricious standard, or the heightened scrutiny standard of review.

18. Ms. McCoy fulfilled all of the requirements for obtaining benefits under the Plan and the insurance policy of Prudential.
19. As a result of Prudential's refusal and failure to pay to Ms. McCoy disability benefits provided to her and to those participants who are totally disabled, Ms. McCoy is entitled to relief against Prudential to recover benefits due to her under the terms of the Plan and insurance policy, to enforce her rights to benefits under the Plan and to clarify her rights to future benefits under the Plan and insurance policy, pursuant to Section 502 of ERISA, 29 U.S.C. §1132.

Count II

Breach of Contract Against Prudential

20. Plaintiff realleges paragraphs 1 through 19 and incorporates the same by reference as if fully set forth herein again.
21. Ms. McCoy is a direct, or intended third party beneficiary of an insurance contract with Prudential and State Street Bank & Trust Company
22. Prudential breached that insurance contract, and caused Ms. McCoy to suffer damages.

Count III

Failure to Timely Provide Plan Document and SPD

23. Plaintiff realleges paragraphs 1 through 22 and incorporates the same by reference as if fully set forth herein again.

24. Ms. McCoy, through her attorneys, made written request for the Summary Plan Description, the Plan documents and other documents required to be disclosed in accordance with ERISA and the United States Department of Labor regulations.
25. Pursuant to 29 U.S.C. § 1024(b)(4) the plan administrator shall, whether *de facto* or actual, upon written request of a participant, furnish a copy of the “other instruments under which the plan is operated,” and a summary plan description.
26. Prudential failed to provide all of the requested documents within thirty days, are a subject to a penalty of as described in 29 U.S.C. § 1132(c)(1) of up to \$110/per day beginning on the thirty-first (31st) day.

WHEREFORE, plaintiff Teresa A. McCoy demands relief and judgment against the defendant Prudential Insurance Company of America as follows:

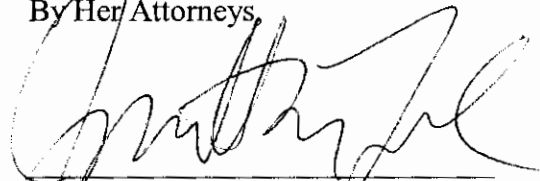
1. In an amount of damages to be determined by this Court, or jury, plus pre-judgment interest, post-judgment interest, costs and reasonable attorneys’ fees allowed by statute or otherwise.
2. Injunctive relief declaring the rights and duties of the plaintiff and defendant with respect to past benefits owed to the plaintiff, and future benefits to be paid to the plaintiff.
3. For an order precluding a remand of this matter for further determination by the defendant regarding the denial of benefits.
4. For a penalty in the amount of \$110.00 per day for each day defendant failed to timely deliver “other instruments under which the plan is operated” and a summary plan description.

5. For such other relief as this Court deems just and proper.

PLAINTIFF CLAIMS TRIAL BY JURY ON ALL ISSUES TRIABLE BY JURY.

TERESA MCCOY

By Her Attorneys,



Jonathan M. Feigenbaum, Esq.

B.B.O. N#546686

Philips & Angley

One Bowdoin Square

Boston, MA 02114

Tel. No. : (617) 367-8787

Date: June 17, 2005

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UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS1. Title of case (name of first party on each side only) Teresa A. McCoy v. Prudential Insurance Company of America

2. Category in which the case belongs based upon the numbered nature of suit code listed on the civil cover sheet. (See local rule 40.1(a)(1)).

- ☐ I. 160, 410, 470, R.23, REGARDLESS OF NATURE OF SUIT.
- ☒ II. 195, 368, 400, 440, 441-444, 540, 550, 555, 625, 710, 720, 730, 740, 790, 791, 820*, 830*, 840*, 850, 890, 892-894, 895, 950. *Also complete AO 120 or AO 121 for patent, trademark or copyright cases
- ☐ III. 110, 120, 130, 140, 151, 190, 210, 230, 240, 245, 290, 310, 315, 320, 330, 340, 345, 350, 355, 360, 362, 365, 370, 371, 380, 385, 450, 891.
- ☐ IV. 220, 422, 423, 430, 460, 510, 530, 610, 620, 630, 640, 650, 660, 690, 810, 861-865, 870, 871, 875, 900.
- ☐ V. 150, 152, 153.

3. Title and number, if any, of related cases. (See local rule 40.1(g)). If more than one prior related case has been filed in this district please indicate the title and number of the first filed case in this court.

N/A

4. Has a prior action between the same parties and based on the same claim ever been filed in this court?

YES ☐ NO ☒

5. Does the complaint in this case question the constitutionality of an act of congress affecting the public interest? (See 28 USC §2403)

YES ☐ NO ☒

If so, is the U.S.A. or an officer, agent or employee of the U.S. a party?

YES ☐ NO ☐

6. Is this case required to be heard and determined by a district court of three judges pursuant to title 28 USC §2284?

YES ☐ NO ☒7. Do all of the parties in this action, excluding governmental agencies of the united states and the Commonwealth of Massachusetts ("governmental agencies"), residing in Massachusetts reside in the same division? - (See Local Rule 40.1(d)).YES ☒ NO ☐A. If yes, in which division do all of the non-governmental parties reside?Eastern Division ☒ Central Division ☐ Western Division ☐

B. If no, in which division do the majority of the plaintiffs or the only parties, excluding governmental agencies, residing in Massachusetts reside?

Eastern Division ☐ Central Division ☐ Western Division ☐

8. If filing a Notice of Removal - are there any motions pending in the state court requiring the attention of this Court? (If yes, submit a separate sheet identifying the motions)

YES ☐ NO ☒

(PLEASE TYPE OR PRINT)

ATTORNEY'S NAME Jonathan M. FeigenbaumADDRESS Phillips & Angley, One Bowdoin Square, Boston, MA 02114TELEPHONE NO. 617-367-8787

JS 44 (Rev. 3/99)

CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

Teresa A. McCoy

DEFENDANTS

Prudential Insurance Company of America

(b) County of Residence of First Listed Plaintiff Bristol
(EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

(c) Attorney's (Firm Name, Address, and Telephone Number)

Jonathan M. Feigenbaum, Esq.
Phillips & Angley
One Bowdoin Square, Boston, MA 02114
(617) 367-8787

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- Citizen of This State ☐ 1 ☐ 1 DEF Incorporated or Principal Place of Business in This State ☐ 4 ☐ 4 DEF
- Citizen of Another State ☐ 2 ☐ 2 DEF Incorporated and Principal Place of Business in Another State ☐ 5 ☐ 5 DEF
- Citizen or Subject of a Foreign Country ☐ 3 ☐ 3 DEF Foreign Nation ☐ 6 ☐ 6 DEF

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury—Med. Malpractice <input type="checkbox"/> 365 Personal Injury—Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes <input type="checkbox"/> 890 Other Statutory Actions
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input checked="" type="checkbox"/> 791 Empl. Ret. Inc. Security Act	SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIW C/DIW W (405(g)) <input type="checkbox"/> 864 SSD Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	

V. ORIGIN

(PLACE AN "X" IN ONE BOX ONLY)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

(Cite the U.S. Civil Statute under which you are filing and write brief statement of cause. Do not cite jurisdictional statutes unless diversity.)

Claim for disability benefits under 29 U.S.C. §1132

VII. REQUESTED IN COMPLAINT:
☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$
to be determined

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE

DOCKET NUMBER

DATE 6/17/05

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE